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PROGRESS REPORT BY THE SECRETARIAT ON THE IMPLEMENTATION OF THE WORK PROGRAMME OF THE STANDING COMMITTEE

Review of the Work Programme of the Standing Committee on Services with Special Emphasis on the Preparation for UNCTAD IX

Report by the UNCTAD secretariat

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INTRODUCTION

1. This document reports on the progress made under each of the items of the work programme of the Standing Committee.

2. The main thrust of the studies prepared by the secretariat and the discussion in the Standing Committee is that (a) the progressive liberalization of service sectors in developing countries is necessary for their improved efficiency and for the integration of developing countries into the process of globalization, (b) such liberalization, however, must be accompanied by an overall strategy and supportive measures to strengthen developing countries' firms and their competitive capacity to compete in their own and in world markets, (c) active participation of developing countries in the globalization process requires that they increase their participation in international trade in services, their main "modes" for doing this are (i) access to information networks and distribution channels, and (ii) movement of persons. International support is required both within and outside the context of the multilateral obligations, in that developing countries may have difficulty in deriving full benefit from the provisions in their favour in the GATS agreement due to discrepancies in negotiating strengths as between developing countries governments and enterprises and those of developed countries. Further negotiations on trade in services, particularly in sectors and modes of supply of interest to developing countries, both at the multilateral and regional levels will be facilitated by more complete data on measures affecting trade in services which can be provided through the development of the MAST data base.

3. The continuation of UNCTAD's technical assistance programmes to assist developing countries in formulating policy measures to strengthen their capacities in production and trade in services, such as the CAPAS programme in Africa, will require an input of extrabudgetary funds, the Standing Committee is being requested to consider the establishment of a trust fund for this purpose.

4. Further policy analysis and technical support is required for developing countries to effectively pursue the objective of increased participation in world trade in services, as well as to prepare for future negotiations on trade in services, in both the WTO framework and the context of regional and sub-regional integration agreements. The GATS provided a mechanism for bringing factor movements within the multilateral trade obligation, how and whether this coverage can or should be expanded will be important questions facing the international trading community over the next few years.

I. CONCEPTUAL FRAMEWORK FOR STATISTICS ON TRADE IN SERVICES

5. Under item 2(a) of the Work Programme, the Committee requested the secretariat to continue to provide support for member countries, particularly for developing countries and interested countries in transition, in improving their capacity to compile and maintain internationally comparable statistics on the service sectors of interest to them, through studies that provide information on developments in this area at the international level, especially with respect to concepts, definitions and methodologies. At the Second Session of the Standing Committee, the secretariat circulated a note on the concept of services trade statistics which summarized developments to date in improving statistics on trade in services and the complications introduced.[1]

6. In the spirit of the above, the Secretariat has continued to provide support within the wider context of an Inter Agency Task Force devoted to international services statistics. As indicated at the previous session of the Committee, these arrangements were instituted in the light of the enormity of the task and the mutual interests of a wide range of agencies.

7. The Task Force was launched at a meeting of the Statistical Commission in

early 1994. The OECD was designated as the Coordinator; other members being EUROSTAT, GATT/WTO, IMF, UNSD, UNCTAD, and the World Bank. The first meeting was held in Paris in July 1994. The main outcome was the elaboration of the terms of reference. which accorded (i) priority focus to the statistical requirements of the General Agreement on Trade in Services (GATS), otner general objectives encompassed (ii) the promotion of standards and systems of classification, (iii) to improve the availability and comparability, (iv) to facilitate the provision of technical assistance to developing countries and countries in transition.

8. At its next two sessions in January and May 1995 work began in earnest on the main challenge relating to GATS. The Task Force agreed to compare GATS statistical requirements to what is currently available from international organizations and to focus on gaps and differences in concepts and definitions. It was agreed that this effort should include the definition of these statistics mainly in relation with GATS requirements taking into account the four modes of supply and that no new statistical domain should be created in order to service GATS needs, but that existing statistical systems would be drawn upon with a view to take GATS needs into account in further developments of concepts, methodology and classification. This would insure consistency with existing statistical systems and also reduce the response burdens on companies and government statisticians.

9. Meanwhile, the most feasible and realistic avenue for data collection is the recently completed 5th revision of the Balance of Payments Manual and the new OECD/EUROSTAT trade in services classification. These classifications incorporate a more detailed and comprehensive disaggregation of service categories, but they still retains the traditional BOP residency approach. A harmonization with the GATS modes of supply approach seems to be a rather problematic task. A first attempt will be undertaken by the WTO to map the OECD/EUROSTAT trade in services classification against the four modes of delivery of GATS and thus explore in more detail the existing problem areas. At the same time EUROSTAT will set up concordance tables between the GATS GNS classification list (MTN.GNS/W/120), the NACE economic activity classifications and other relevant classification systems.

10. The discussions bearing on Globalization centred on the intricacies of collecting statistics on foreign affiliates trade (previously called establishment trade) which is particularly relevant for the supply of services through commercial presence. The first difficulty faced by statisticians in this area arose with respect to concepts such as foreign control which is essential to determine the subset of companies that are considered to be foreign suppliers under the GATS rules. Under those rules, the sales of companies that are majority owned or controlled by persons residents in another member country are considered to be exports of services from the home country concerned. The reluctance of companies to comply with the additional response burden has already been observed during the pilot surveys. In addition, it appears to be increasingly difficult to distinguish between goods and services in international business transactions where service components are often packaged with goods. While the extension beyond the realm of GATS defined services is not a problem by itself, it would certainly lead to serious classification problems for statisticians. EUROSTAT is currently at the forefront in developing classifications and procedures for collecting such statistics especially through its Task Force on Establishment Statistics.

11. With respect to technical assistance, the difficulties in the short term were emphasized. These hinge largely on the absence of an internationally agreed methodological framework in the area. Nevertheless, it was agreed that a list of existing information relevant for developing statistics on trade in services would be collated by the WTO. For the time being, technical assistance will focus on the new BOP Manual of the IMF and the joint OECD-EUROSTAT trade in services classification.

Box 1

Inadequacies of Statistical Domains with regard to Modes of supply

Mode of Supply	Relevant Statistical Domains	Inadequacies
Cross border supply	BOP service statistics (other categories than travel)	- BOP not distributed between cross border supply and movement of natural persons (individuals)
Consumption abroad	BOP Statistics (mainly the travel category)	- Travel also contains goods, and not subdivided into the different categories of services consumed by travellers - Some transactions related to this mode of supply are also in other BOP categories
Commercial presence	Production and FDI statistics	- basic concepts and definitions not yet established
Movement of natural persons (individuals)	BOP Statistics (mostly other private services categories)	- BOP not distributed between cross border supply and movement of natural persons (individuals)
Movement of natural persons (employees)	Employment data from foreign affiliate trade statistics	- ideally broken down between national and foreign employees

II. UNCTAD'S DATABASE ON MEASURES AFFECTING SERVICE TRADE (MAST)

12. Under item 2(b) of its Work Programme, the Standing Committee was requested to "collect and disseminate information on measures, including laws and regulations, affecting the access of services and service suppliers to world markets, including a study of the possibility of setting up a computerized database in this regard, with a view to enhancing the service exports of developing countries." Pursuant to the above, UNCTAD secretariat explored the feasibility of establishing a computerized database to provide information on measures on service trade and presented a prototype database before the second session of the Standing Committee.[1]

13. In its conclusions and recommendations, the second session of the Standing Committee agreed that the proposed database on measures affecting service trade was a valuable tool for supporting the efforts made by developing countries to participate more effectively in international trade in services, and recognized the importance and the urgency for its early establishment. The Committee requested the UNCTAD secretariat to implement a computerized database on measures affecting service trade as soon as possible, and urged the member countries to actively collaborate with the secretariat in this effort. The Committee further specified that: (i) the purpose of the database will be to facilitate the access of services and services suppliers from developing countries to world markets

by providing structured information on measures, including laws and regulations; (ii) the database would focus on sectors of interest to services suppliers from developing countries, and would cover all measures affecting their service exports; (iii) given the large scope of the database, priority would be given to the inclusion of information on measures relating to those sectors, modes of supply and markets that are of major interest to developing countries, including those which are currently subject to negotiations at multilateral or regional fora, (iv) the secretariat should seek the collaboration of relevant regional or international organizations and institutions in the technical design of the database and in compiling information for the database; and (v) member countries wishing to collaborate in the development of the database are requested to make appropriate arrangements with the secretariat. In this context, the secretariat should assist countries on request in the implementation and possible adaptation of the database for use at the national level.

14. Since the second session of the Committee, the secretariat has been compiling information for MAST from the commitments made by countries in the context of the General Agreement on Trade in Services, as well as through its own independent research, some in collaboration with individual countries and groups of countries.

15. For example, UNCTAD has been collaborating with the ALADI secretariat in compiling information on measures affecting service trade among Latin American countries so as to assist in intra-ALADI negotiations on liberalization of trade on services. Data entry has relied primarily on regulatory instruments supplied by the ALADI member countries, but also on the GATS commitments. UNCTAD is collaborating with the OAS Trade Unit to provide a data base for use in efforts to further liberalize trade in services in the Western Hemisphere. Particular efforts have been made to identify measures affecting the trade in services of countries where UNCTAD is executing national or regional projects. There is also collaboration with certain international and regional organizations such as World Tourism Organization, Pan American Health Organization, etc.

16. At present the database has approximately 2000 records all together. This is expected to grow by the third session of the Standing Committee in September. The software for MAST has been rewritten in order to make information more easily accessible and more useful in the context of negotiations for users. While compiling information from the GATS Schedules as well as from other regulatory instruments and sources, the following problems were identified. Measures affecting service trade pose a major difficulty with respect to classification. The measure type system used in the prototype database, it was felt, needed simplification as well as revision so as to make it more easily compatible with the definitions agreed upon in the context of GATS. Some users felt that more information could be provided in a user-friendly manner in the first screen. There were suggestions that the programme should allow for selection of information of sectors that are unbound by countries in their GATS commitments. It was also felt that non-discriminatory measures, as mentioned in article VI of GATS, should form part of the criteria for classifying information in MAST. Some users, notably in the context of the collaboration with ALADI, felt that it would be very useful to adapt the software for providing information in different languages.

Changes in the structuring of information

17. Taking these suggestions into account, the secretariat decided to make some changes in the structuring of information for the database, and to implement some alterations in the software for the database. The major changes in the structuring of information are the following:

- The measure type system has been revised to make it more in conformity with the definitions in GATS, Article XVI and VI. New classification have been discussed for measures affecting MFN and national treatment . The new measure type system will comprise the following categories:

Measures affecting market access

a Limitations on the number of providers
b Limitations on the total value of service transactions or assets
c Limitations on the total number of service operations
d Limitations on the total number of persons that may be employed in a particular sector
e Measures which restrict or require specific types of legal entity or joint venture
f Limitations on the participation of foreign capital
g Other measures affecting market access

Measures affecting national treatment

a Discriminatory taxes
b Discriminatory incentives/subsidies

c Government procurement policies
d Local content requirements
e Nationality, citizenship or residence requirements
f Other measures affecting national treatment

Measures affecting MFN treatment

a Integration agreements, as stated in article V of GATS
b Reciprocity requirements
c Bilateral agreements
d Other measures affecting MFN treatment

Non-discriminatory measures, as stated in article VI of GATS
a Licensing procedures
b Technical standards
c Recognition of qualifications
d Other measures related to article VI of GATS

- Instead of providing for three GATS sectoral classification codes for each record, the new version will allow only one GATS entry per record. This means that cases where one CPC entry does not correspond with one GATS entry, the user will need to repeat the information in more than one record. However, the instances where such incompatibility arises are very few.

- The defining parameters of each record in the new version of the database will be the combination of Country, CPC, GATS Sectoral Classification, and Mode of delivery. In other words, each record will contain information on measures affecting a particular mode of delivering a particular service in the reporting country.

- This means that each record in the new version will contain more information than records in the earlier version. This allows the user to have easy access to more information from the first VIEW panel.

- As the measure types have been revised and simplified, each cell may contain more measures than one. To deal with this problem, separate paragraphs will be introduced in each cell to indicate information on different measures (see below for more details).

- A new column "Rank" will be introduced, where the user may wish to input numbers from "0" to "9" and letters from "a" to "z". He could use this for ranking the information according to any parameter he chooses. The programme will select and rank information according to the entry in this column.

- In the new version, the user will be able to select information according to any term introduced in the "Remarks" column. This will enable him to use this column for introducing keyword or other codes to mark up an entry in addition to introducing text commenting on the record.

III. A COMPREHENSIVE ANALYSIS OF SERVICES SECTORS IN DEVELOPING COUNTRIES

18. At the Second Session of the Standing Committee considered the report of the secretariat under item 3a of the Work Programme on "Fostering competitive service sector - a comparative analysis of services sectors in developing countries" based on its experience, essentially in the context of technical assistance programme. The Standing Committee recommended at its second session, to continue the work of identifying policy options for developing countries to strengthen their domestic service sectors and to make them more efficient and competitive, including the problems of adaptation of domestic regulation of services in the context of the liberalization. As the analysis of this issue requires in depth coverage of relevant policy measures affecting trade in services used by member countries and of their experiences with the implementation of such a policies, the Standing Committee requested the secretariat to prepare and distribute a questionnaire to member countries. Pursuant to this recommendation the secretariat has prepared the following draft questionnaire on policy measures and instruments applied to services trade, for consideration by the Standing Committee.

QUESTIONNAIRE

PART ONE: Policy measures and Services Development Strategies

1. Is the Government implementing strategies targeting the development of competitive services sectors? If so, what policy measures are used in this respect.

2. What laws and regulations are being applied to this end? for specific services sectors? for services in particular regions or by sub-national entities?

PART TWO: Strengthening the Capacity of Services Enterprises

3. Are there any specific policy measures to support services enterprises with regard to:

   a. strengthening the financial capacity;

   b. improving their access to telecommunications and information technologies;

   c. improve their accumulated knowledge, skills and reputation;

   d. improve their capacity of access to and use of information networks and distribution channels;

   e. their capacity to establish relations with suppliers and buyers locally and with foreign clients;

   f. strengthening their presence in foreign markets;

   g. strengthening their ability to offer a package of services;

   h. domestic market size

   i appropriate government incentives.

PART THREE. Policies to support the promotion of domestic competitive service sectors

Developing countries pursue the objectives of strengthened service sectors and increased participation for their firms in international trade in services.

1. What are the main impediments faced by your country in attaining this objective:

(i) modern telecommunication and telematic infrastructure

(ii) access to technology and training facilities

(iii) market entry and anti-competitive on trade restrictive practices

(iv) participation in information networks and access to distribution channels

(v) financial constraints

(vi) access to foreign markets

2. The strategies of developing country governments to strengthen services sectors and increased participation for their firms in world trade in services involve three essential components: the national level, the international cooperation, the role of UNCTAD.

A. Measures at the national level

Among the following national measures, give an indication of those implemented by your country:

(i) human resources development

(ii) upgrading of information and telecommunications infrastructures

(iii) creation of services centres

(iv) government procurement policies

(v) well design regulatory framework for services

(vi) export promotion measures: tax incentives, relaxation of foreign-exchange regulations, duty-free import of essential equipment, etc.

(vii) marketing (international standard in quality, access to market intelligence)

(viii) import policies that contribute to development objectives

B. Measures taken at the international level

On which measures should international attention focus to facilitate the growth of trade in services in developing countries.

(i) regional and sub-regional cooperation

(ii) wider and more significant liberalization in the context of the multilateral framework for trade in services

(iii) action against unfair trade practices by services firms

(iv) ensure effective market access for developing country firms to the markets of developed countries, including a preferential basis where relevant

C. UNCTAD has the task of helping developing countries overcome their handicaps in the field of services, enhance their participation in world trade in services, promote environmentally friendly services and enhance the contribution of services to their sustainable development.

Does your country have specific requirements for technical assistance regarding the promotion of competitive service sectors? If yes, with regard to which particular focus and in what desirable form?

IV. IMPACT OF LIBERALIZATION OF SERVICE SECTORS

19. Under item 3b, the Standing Committee was requested to facilitate and exchange of experiences with respect to the liberalization of services sectors and the application of laws and regulations aimed at this end, with a view to stimulating the development of these sectors, under item 3(c) it was to analyze ways and means of fostering the market-oriented development of the service sector including, where appropriate, through deregulation and privatization.

20. The documentation prepared by the secretariat for the preceding item[1] was also relevant to these items, as well as the study on Liberalizing Transactions in Services[4], prepared in collaboration with the World Bank. It is clear, however, that this work suffers from a lack of actual studies and experience.

V. IMPACT OF SUBSIDIES ON TRADE IN SERVICES

21. Under item 3(d) of its work programme, the Standing Committee at it second session considered the impact of subsidies on trade in services, on the basis of a background note prepared by the secretariat under agenda item 3 (d) of the work[1] programme. The note highlighted the following elements with regard to the implementation of the work programme on subsidies: (i) a systematic identification of subsidies to services production and trade as a prerequisite to accomplishing the mandate of the Standing Committee; (ii) the desirability of focusing work on a sectoral basis; (iii) the need to study national experiences in the use of subsidies to develop export capacities in services sector; and (iv) the identification of specific issues peculiar to trade in services such as those arising from the different modes of supply.

22. The Committee at its second session agreed that the secretariat should continue its work aimed at assessing the impact of subsidies on trade in services, especially on sectors of interest to developing countries, In this context, the Committee requested the secretariat:

(i) Carry out sector-specific studies to obtain further insight into the forms of subsidization, their extent and their impact on trade in services; and

(ii) Obtain more information on subsidizing practices, by means including the circulation of questionnaires on the different types of current practices.

GATS and Subsidies

23. Article XV of GATS provides inter alia that "Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade distortive effects. effects. The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and

take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to domestic service suppliers."

24. During the Uruguay Round negotiations on the GATS, some developing-country proposals provided for a standstill and rollback on subsidies of developed countries and flexibility in the use of subsidies by developing countries to achieve specific objectives.[6] In contrast, the US and the EC proposals provided for elimination of subsidies that cause or threaten to cause serious prejudice or injury to the interests of another party.

25. The WTO Council on Trade in Services at its meeting on 30 March 1995 established a working party to conduct the negotiations on safeguards, government procurement and subsidies. The Council at its third session on 30 May 1995 decided that the issues would be discussed at staggered dates with four months interval. The issues will be dealt with in the order they appear in the GATS beginning with safeguards in July, government procurement in November and subsidies in March. Some discussion on subsidies has taken place since the conclusion of the Uruguay Round in the context of submissions by Canada and the United States of addenda to their schedules on subsidies and taxes at sub-federal level, as well as in the negotiating groups on basic telecommunications services and maritime transport.

General considerations

26. While developing countries need flexibility in using subsidies to improve their domestic capacity for production of services, it would seem that stricter disciplines on subsidies should apply to developed countries, as in the case of goods. Developed countries have employed many means to support their services sector activities in the pursuit of national policy objectives. According to an OECD study the incentive for governments to use of subsidies seems to be expanding, particularly in high-tech industries and horizontal subsidies (e.g. regional aid).[7] Transport (e.g. railways, shipbuilding) and communications services including aerospace seem to be amongst the most subsidised sectors. The objectives of such incentives include strengthening infrastructure, building up competitive capacity, upgrading quality of services, encouraging new industries, aiding declining ones, encouraging specific economic activities such as research and development, attempting to equalize economic opportunity in different regions, correcting current-account imbalances, increasing employment and transferring income, and rebalancing trade. The types of instruments used include grants for the use of factors of production such as labour and capital, tax concessions, subsidized loans, loan guarantees, government equity participation and output subsidies. The provision of government services below cost and the purchase by the government of goods and services at above-market prices also constitute subsidization.[8]

27. The negotiation of precise disciplines on subsidies was postponed because obligations would relate to judgements on the economic impact of trade. The lack of disaggregated statistics and the absence of common nomenclature are also additional constraints on application of countervailing duty action in the context of service production and trade. It is clear that for many services it would be difficult to obtain adequate data with respect to market shares and prices, and that the concept of "unit of output", and consequently "unit costs", might be somewhat in applicable to many services sectors. Other problems would arise from difficulties in identifying the "origin" of services and from confusion between foreign and domestic firms. Difficulties in calculating the price differential arising from a subsidy, and the consequent injury to domestic producers, have led to proposals that subsidies to services trade along with dumping should be dealt with under dispute settlement procedures or through competition law, rather than unilaterally. In the case of trade-distorting subsidies, multilateral surveillance requires data that are comparable across countries, implying both the use of common definition of subsidies and

standardisation of the methods used to calculate them.'

28. The broad definition of trade in services under the GATS, which includes trade effected through commercial presence and the movement of natural persons to supply services as well as movement of consumers, could mean that benefits accruing to enterprises (in the sense of Article 1 of the Subsidies Agreement in the Final Act, such as preferential tax regimes for foreign operations, which directly or indirectly benefit their foreign-based subsidiaries, might also be considered as subsidies to exports of services. Moreover, subsidies to the parent firm in the home country could provide competitive advantages to foreign subsidiaries abroad. Special fiscal and other benefits in favour of foreign consumers who purchase services in the country might also fall in this category. Given the heterogeneity of the services sector, including the differences in the way trade takes place as between sectors, the subsidy question might best be addressed on a sector-specific basis, as it would be extremely difficult to adopt a common approach to identify the trade impact of subsidies.

29. There is not much published information related to subsidies on services although it is clear that some services sectors are highly subsidized, and that members, particularly more vulnerable developing countries, are reluctant to include such sectors in their schedules of concessions until clear rules are drawn up with respect to subsidies.[10] While the reduction and elimination of trade-distorting subsidies could be an eventual objective, it would be important to define, from the beginning, the legitimate objectives of subsidies in services (e.g. to strengthen infrastructure, to assure a minimum level of services to the population, to build up competitive capacity, to up grade quality of service, regional development, national security, cultural and environmental protection). It is widely accepted that generally available subsidies and subsidies made available to certain beneficiaries on the basis of objective and neutral criteria should be permitted. The possibility of taking unilateral countervailing measures, given the experience with countervailing duties on goods (which would be potentially open to even greater abuse in the services sector) could cause difficulties in the services sector. The criteria for judging the acceptability of subsidies in the services sector could be different from that for goods given their different role.

Entries on Subsidies in the schedules of commitments

30. Some schedules of commitments include in their horizontal sections covering measures applicable to all sectors, under the column limitations to national treatment, an entry on subsidies. Most of the entries on subsidies relate to the commercial presence and movement of natural persons mode of supply. The purpose of including these entries is because of the national treatment implications of subsidies because they affect conditions of competition. The entries generally limit the eligibility for subsidies to companies established in a country or owned by nationals of a country and to natural persons who are nationals or residents of a country.[11] The subsidies scheduled relate mainly to research and development (e.g. Japan, Canada, Brazil, Iceland, Australia, the United States, European Union, Mexico, Korea), regional aid (e.g. EU) investment aid (e.g. Kuwait, United States), aid to small and medium sized businesses (e.g. Mexico, United States), and aid to socially or economically disadvantages groups (e.g. United States, Canada, Malaysia, Australia).[12] Most of the scheduled subsidies would be permitted under the WTO Agreement on Subsidies and Countervailing Duties under specific conditions.

31. Different approaches are taken to scheduling of subsidies. Whereas, some schedules provide for the possibility of applying all types of subsidies across the board, for example the Schedules of Switzerland, Lichtenstein, Norway, Austria, Hungary, include the entry "unbound for subsidies" in all modes of supply or a particular mode of supply, which means that all subsidies across the board to national suppliers of services need not be offered to foreign suppliers of services. Other schedules refer to particular type of subsidies e.g. unbound for research and development subsidies.

32. The United States Schedule includes the entry unbound for subsidies for market access and national treatment under cross-border movement and movement of consumer modes of supply. Under commercial presence mode of supply, however, it enters specific types of subsidies i.e. The Federal Overseas Private Investment Corporation (OPIC) insurance and loan guarantees are not available to certain aliens, foreign enterprises, or foreign-controlled enterprises established in the United States; Trade and Development Agency financing is limited to: I. individuals (1) who are either U.S. citizens or non-U.S. citizens lawfully admitted for permanent residence in the United States, and (2) whose principal places of business are in the United States, or II. privately-owned commercial corporations or partnerships that are incorporated or legally organized under the laws of the United States and whose principal places of business are in the United States, and (1) that are more than 50 per cent beneficially owned by individuals who are U.S. citizens or (2) that have been incorporated or legally organized in the United States for more than three years, have performed similar services in each of the prior three years, and employ U.S. citizens in more than half of their permanent full-time positions in the United States and have the existing capability in the United States to perform the contract; Federal Small Business Administration loans are restricted to US citizens or companies that are 100 percent owned by US citizens and whose directors are all US citizens; and unbound for research and development subsidies. The US schedule also provides for some differential tax treatment.

33. The EU also provides for subsidies in its schedule, by including a horizontal entry under national treatment limitations relating to commercial presence and movement of natural persons mode of supply. These provide that subsidies are unbound for branches established in a Member State by a non-Community company; Eligibility for subsidies from the Community Member States may be limited to juridical persons established within the territory of a Member State or a particular geographical sub-division thereof; unbound for subsidies for research and development; supply of a service, or its subsidization, within the public sector is not in breach of national treatment; and to the extent that subsidies are made available to natural persons, their availability may be limited to national of a Member State of the Community.[13]

Subsidies and taxes at the sub-federal level

34. On the scheduling of measures relating to subsidies and taxes at the sub-federal level, the statement of the Chairman of the Group of Negotiations on Services issued on 13 December 1993 (MTN/GNS/50) provided for a procedure for the completion of scheduling of measures related to subsidies and taxes at sub-central level which included a deadline for such submission by 15 June 1994 and a period of thirty days during which consultations may be requested. The United States and Canada have put forward addendum to their schedules in this regard. The Canadian addendum did not pose any problem to other Members of the WTO.[14]

35. On the United States' addendum, however, several consultations have taken place on the basis of their communication (document PC/SCS/ W/4, dated 30 June 1994) to clarify its content. The United States' submission was the outcome of consultations with their State tax authorities. It should be recalled that in view of concerns of the Treasury and Internal Revenue Services in the United States about interference in matters of taxation as a result of GATS Article XVII on National Treatment, during the final stages of the Uruguay Round the United States proposed to include in its Schedule of Concessions a horizontal limitation on national treatment covering all forms of direct taxation. Other participants in the Uruguay Round believed that to grant such an exception on national treatment could render the United States' offer meaningless. To meet the concerns of the Treasury, Article XIV (d) on General Exceptions contains footnote 6 elaborating on the type of measures aimed at the equitable or effective imposition or collection of direct taxes and a definition of direct taxes. The list is illustrative and it is without prejudice as to whether any of them would

be inconsistent with Article XVII on National Treatment. Moreover, the measures found to be justified under the footnote would normally be expected to meet the requirement in the chapeau of Article XIV that they should not constitute a disguised restriction on trade. In principle, this exception clause does not necessarily imply acceptance of any tax measure taken by a GATS member, whether or not covered by the exception clause. Therefore, any tax measure could be taken to dispute settlement."

36. At the Preparatory Committee for the WTO, Sub-Committee on Services, the United States explained that the proposed addendum was put forward as a result of their concern that the formulation in footnote 6 to GATS Article XIV on exceptions only related to direct taxes, whereas most taxes imposed by the States were indirect and might not therefore be covered by the footnote. Another major concern for the United States was uncertainty regarding the likely interpretation of the national treatment obligation in Article XVII of the GATS by future panels. This uncertainty derived from the report of the Panel on "United States Measures Affecting Alcoholic and Malt Beverages",[6] though it was not clear that the same analysis would apply to services.

37. On subsidies, the addendum includes (1) sub-federal subsidies measures which afford more favourable treatment to socially or economically disadvantaged groups, including measures which provide incentives, benefits or other assistance. these groups may include women, veterans, racial minorities, physically disadvantaged persons, students, youths, elderly persons and small businesses; (2) subsidies measures of a sub-federal jurisdiction which are available only to juridical persons of another Member which are incorporated or organized in that jurisdiction; (3) subsidies measures of a sub-federal jurisdiction which are available only to entities with a principal place of business in the sub-federal jurisdiction or with a substantial or significant commercial presence in the sub-federal jurisdiction ; (4) subsidies measures taken by Alaska which are available only to United States citizens residing in Alaska and subsidies measures taken by Hawaii which are available only to Hawaiian natives (Preparatory Committee for the World Trade Organization, Sub-committee on Services document PC/SCS/W/4).

38. The United States has explained that these subsidy programs may have the effect of discriminating against foreign suppliers and modifying the conditions of competition. The subsidies in categories 2 and 3 limit access to subsidies by distinguishing between the entities incorporated or organised or with a principle place of business or with a substantial or significant commercial presence in the jurisdiction and other categories of service suppliers(i.e, cross-border providers, agents/representatives, branches). Thus, for service suppliers who provide their services in such a sub-federal jurisdiction using modes one or four, and for some service suppliers who provide their services using mode three, these suppliers will not necessarily receive the benefits of such subsidy programs because their particular form of providing the services will not meet the jurisdiction's requirements.

39. The United States believed that only two of the types of tax measures cited in the addendum to their schedule of commitment involved de jure differential treatment of foreign taxpayers; the others involved possible de facto discrimination. Both tax and the subsidy measures cited were, in their opinion, minor and unlikely to have significant impact on services trade. Other delegations had expressed serious concern about the US submission as the specification of the measures covered was imprecise, indicating broad categories of possible measures, which might include future measures, rather than specific laws or regulations and their field of application.

Subsidies and the on-going negotiations under the GATS

40. The negotiating groups on basic telecommunications and maritime transport have briefly touched upon the issue of subsidies as these are two sectors in which subsidies play an important role. These related to efforts to improve

transparency and did not relate in any way to negotiations on subsidies. On basic telecommunications, the issue of subsidies has come up mainly with relation to measures related to pricing (e.g. cost-oriented pricing) and cross-subsidizing to finance the extension of more modern telecommunications services on a wider scale. The issue of software and hardware subsidies could be important for telecommunication network-based services as may be the question of "transportation" subsidies of services over public networks. Subsidies may arise in many forms, for example, through assisting the creation of a market (such as videotex). Research and development subsidies may also raise important issues.

41. The Negotiating Group on Maritime Transport Services distributed a questionnaire to facilitate an exchange of information on market and regulatory structures applying to maritime transport services sector. The questionnaire contains in its Part II on regulatory structure a section on national treatment. This section requires information on measures which discriminate in favour of national maritime transport services or service suppliers and includes direct preferential treatment e.g. subsidies and indirect preferential treatment e.g. preferential tax treatment. The answers to questionnaires provides some information on the type of subsidies prevailing in the maritime transport sector. Generally the purpose of granting these subsidies is to re-balance manning and other operating costs between nationally-flagged vessels and foreign competitors."

42. The EU response sets out the following subsidies: public port services organized in the form of a monopoly or subjected to a public service obligation may be granted compensatory measures or aids according to their non-commercial situation, international shipping are generally exempted from VAT, and some members grant directly or indirectly public aids to shipping companies established in their territories, or the operation of vessels registered in and flying the flag of member states. Such support schemes are generally meant to compensate for the additional costs associated with the conditions attached to ship registration.

43. The US provides Operating Differential Subsidy (ODS) to some US-flag vessels whose operators hold US citizenship, operating in the international trade to place their operating costs on a parity with those of foreign competitors. Subsidy is paid pursuant to 20-year ODS contracts. US citizens owning or leasing eligible vessels may obtain tax benefits through the maintenance of Capital Construction and Construction Reserve Funds to construct qualified vessels. The former Fund is designed to aid US vessels of US registry constructed in the US, with the objective of removing competitive disadvantages that US operators have relative to foreign-flag operators. The latter Fund is also a financial assistance program that provides tax deferral benefits to US shipowners."

Possible questions which need to be addressed to determine the parameters of the subsidies issues

44. To enable the secretariat to undertake the requested work on the trade impact of subsidies, it is important that members of the Standing Committee provide information on: specific legislation and regulation relating to subsidies, statement of government policy, action taken pursuant to the above, studies, bibliography of relevant material.

45. As requested, the secretariat has prepared the following questionnaire for the consideration of the Standing Committee:

- Identify the thrust of government policy priorities (e.g. strengthen infrastructure, ensure universal services, upgrade quality of services, build up competitive capacity, employment aid, aid to enterprises in difficulty, promotion of exports and trade-related aid, investment aid, regional development aid, assistance for disadvantaged segments of the population, research and development aid, sectoral aid and aid to small and medium-sized enterprises) and

the relative contributions of various subsidy instruments (e.g. grants, tax concessions, soft loans, equity participation)

- Is the legislation providing incentives to specific service sectors, or to users of specific services?

- Do such subsidy programmes (i) facilitate movement of persons abroad, and (ii) facilitate outward investment in services sector.

- Does legislation provide for direct preferential treatment which are granted by your government exclusively to domestic services or services suppliers?

- Does national legislation identify any foreign subsidies which are considered as trade-distorting?

- Does provincial or state legislation provide incentives to (i) the use of services, (ii) the export of services?

- Does national legislation provide for remedial measures to offset harmful effects of subsidies of other countries on services? Has such legislation been applied for specific service sectors? If no such legislation exists, is it being considered? If it exists, what criteria are used before remedial action can be taken against trade-distorting measure?

- Given that foreign firms with commercial presence will be subject to national laws and regulations, are there provisions for dealing with home country measures which could provide unfair competitive advantages?

46. On the basis of the comments received, the secretariat will prepare a final, consolidated version for circulation to Member States.

47. Under item 3(e), the Standing Committee is to examine ways of enhancing access to and use of information networks and distribution channels. In order to obtain a clearer idea of the issues involved, an expert group was held in Madrid in January-February 1995 in collaboration with FUINCA. The deliberators at this group have provided the basis for document TD/B/CN.4/42 circulated at the Third Session.

48. Item 3(f): Examine the role of joint ventures in stimulating the development of service sectors in developing countries and promoting trade in services and their access to technology. Work under this item has not yet been undertaken.

49. Progressive Liberalization and Difficulties faced by Developing Countries under item 3(g), the Standing Committee is to assess the impact of progressive liberalization and of service imports in the development of competitive service sectors and examine the difficulties faced by developing countries which prevent their participation in world trade in services.

50. Item 3(h), instructed the Standing Committee to identify and analyze the possibilities for developing country services exports through temporary movements of persons as services suppliers, be it as sole service providers or as personnel; and analyze the measures affecting their ability to export such services due to barriers to the temporary movement of persons across national frontiers to supply services.

51. Under item 3(h), the Secretariat prepared a note on "Temporary Movement of Natural Persons as Service Suppliers", discussion of this issue at the Second Session led to further recommendations for work under this item. These have been incorporated into the document prepared under 3(g)" which also examines the

issues related to the impact of the liberalization of services sectors in developing countries.

52. Recognition of Qualifications under item 3(i) of the work programme, the Standing Committee was to analyze the on-going process of recognition and harmonization of qualifications. The Secretariat prepared a background note for the Second Session[30]. Member countries were urged to provide information to the Secretariat on relevant professional associations in their countries. The Secretariat has been collecting information on its own initiative for inclusion in the MAST data base.

REGIONAL, SUBREGIONAL AND INTERREGIONAL COOPERATION ON SERVICES

53. Under item 3(j) of its Work Programme, the Standing Committee will identify and analyze policies aimed at the promotion of regional, sub-regional and interregional cooperation on services, including among countries at different levels of economic development.

54. The Secretariat has received only limited information from the secretariats of regional grouping which has hampered to ability to carry out this mandate. However, it has been called upon to assist developing countries in efforts to include services within regional and sub-regional integration schemes.

55. The importance of trade in services as an element of regional agreements has assumed growing importance since the inclusion of trade in services in the Uruguay Round, and as a result of some regional initiatives, that culminated with the full incorporation of services into their integration agreements. The increasing awareness among developing countries about the crucial importance of trade in services, its impact on the development process has bring about the challenge of revitalizing the existing cooperation and integration schemes by incorporating services into such agreements, in order to meet provisions of Art V, of the GATS which guarantees the legitimacy of these arrangements. Art V of GATS is similar to Art. XXIV of GATT on free trade agreements and customs unions, however it has different criteria and flexibility in the exam of grouping among developing countries.

56. In summary, the approaches adopted on regional cooperation on services roughly fall into the following categories:

(1) Agreements which provide for the free movement of factors of production, i.e capital and labour,and services as an essential right for the attainment of which specific time limits are set. Services are treated as a residual sector, i.e. where not covered by the provisions on factor movement. Such services may be subject to common policies i.e common transportation or telecommunications policy.

(2) Agreements which envisage free movements of factors and services as a long-term objective, through negotiations to be accomplished through the removal of restrictions identified in a list of reservations or through the progressive negotiation of sectoral agreements.

(3) The GATS model in which factor movements to deliver services are considered "trade in services" and for which liberalization (on market access and national treatment) is negotiated on a reciprocal basis, i.e. which could include different countries liberalizing different sectors or trade in goods.

Approaches to regional cooperation on services

a) Residual approach

57. One means of approaching the liberalizations of trade in services in regional agreements is to deal directly with the liberalization of factor movements i.e. capital and labour, and treat services as a "residual" sector.

This approach was adopted by the European Community. The treatment of services according to this approach arises by the definition of services in Article 60, of the Treaty of Rome. It covers all the transactions where they are normally provided for remuneration in so far as they are not governed by the provision relating to freedom of movements for goods, capital and persons, that are treated by other laws and instruments. Some services are subject to common policies, such as transportation, financial services include: activities of an industrial or commercial character; activities craftsmen; activities of the professions.

58. The implementation of Single European Act during the 1987-1994 period, laid the basis for completion of 300 directives concerning the elimination of remaining regulatory barriers on the free movement of goods, services, labour and capital, including the removal of customs checks on products crossing national borders within the E.U, agreement on harmonization and mutual recognition of professional qualifications, the free movement of firms and investment capital and a common market on services. In this case, rights should be progressively extended across the border, regardless of any particular sectorial consideration, eliminating gradually any possible discrimination, or specific obstacles to trade, that could be encountered in the process, that affect services providers from Member countries. There is a commitment to liberalize measures affecting services trade. Measures incompatible have to be phased out, and are treated as exceptions[21].

59. The approach to services implemented by the E.U. was incorporated in the agreement of the European Economic Area signed by the European Union and EFTA countries, the signatory countries are committed to grant among themselves the free movement of persons, capital and services, including the right of establishment and national treatment to services and services providers. Furthermore, the parties are committed to take the necessary measures to make effective the mutual recognition of diplomas, certificates and other evidences of formal qualifications, including the coordination of provisions in order to make easier for persons to take up and pursue activities as workers and self-employed persons.

60. Some association agreements between the European Community its Member States and countries of Central and Eastern Europe[22] recognizes "that the parties shall take the necessary steps gradually to allow the free provision of services". Furthermore the Parties shall temporarily accord the movement of nationals providing service to employees constituting "key staff" of the enterprise providing the services, including representative of enterprises who are temporarily posted in order to negotiate sales or seek customers for the service provider but do not themselves sell or provide services the services. Similar agreements are been negotiated by the E.U. with Russia and a number of other republics of the former Soviet Union.

(b) The negative list approach

i. The OECD codes

61. Since its creation in 1961, the Organization for Economic Cooperation and Development has promoted the liberalization of international trade in goods and services and the freedom of capital movement. Such an objective materialized with the disciplines contained in the Code of Liberalization of Current Invisible Operations and the Code of Liberalization of Capital Movement, which cover a larger part of international transactions and payments other than trade in Goods. Through this non-binding legal instruments OECD Members have committed themselves to a process of progressive liberalization of invisible transactions, including most of services and capital movements.

62. In adhering to the Codes, the Member countries undertake to remove trade restrictions except for specified list of current account invisible operations and capital movements (negative list). Once listed a reservation the member countries retains the right to maintain restrictions on the operation concerned.

A Member which lists a reservation or invoke a derogation clause continues to benefit from the liberalization measures taken by the other Members; retaliation is not permitted under the codes.

63. Within the legal framework of the OECD Codes "liberalization" means "the abolition of restrictions on the conclusion or execution of transactions and transfers with respect to the operations specified in the Codes"[23]. Within this process of liberalization Member countries seek to engage themselves in a process of progressive liberalization, allowing reasonable scope for countries in different circumstances to move towards the ultimate objective in different ways and varying speeds, mainly according to the economic circumstances they face. One important feature of the Code is that liberalization measures, are non-binding, but are to be applied to all Member countries on a non-discriminatory basis. The only exception is the reciprocity treatment prevailing in the banking and financial services sector, where particular problems arise from the existence of different institutional structures. As the OECD is not a regional arrangement in the sense of GATS Article V, all liberalization measures have to be extended to all WTO members.

ii. The North American Free Trade Agreement

64. The North American Free Trade Agreement (NAFTA), signed by Canada, the United States and Mexico, entered into force on 1 January 1994. Under this Treaty the signatory countries are committed to create a free trade area and to dismantle progressively most restrictive measures to trade in services in a ten years period. These measures refers to reservations and exceptions of Member to MFN in the NAFTA context, national treatment, local presence, obligations relating to performance requirement and to requirements of nationality of senior managers. The reservations are incorporated in a "negative list" i.e the non-conforming measures to the basic principles of the agreement, are appended to the agreement in a set of seven annexes[24]. An important implication of the negative list approach is that any restrictive measure not listed in the annexes, is automatically liberalized among the parties upon the date of entry into operation of the NAFTA.

65. Services "traded" through factor movements are treated as such, any discriminatory measure to national treatment or access to a service market, are considered by NAFTA Members as quantitative restrictions and are listed in annex. The elimination of such restrictions are subject to periodic negotiations. Commercial presence is dealt with in the chapter on investment (which cover investment in good and services). There is chapter ruling the movements of physical persons, which deals mainly with temporary entry of four categories: business visitors, traders and investors, intra-company transferee and professionals[25]. This is complemented by the commitment of elaboration of measures to facilitate movement of physical persons on a reciprocal basis. Moreover as part of cross-border trade are appended provisions and procedures in professional services in areas such as recognition of diplomas, examination experience, professional conduct and ethics, alternatives to residency requirements and liability insurance. There are specific provisions for financial services are telecommunications which are treated in separate chapters.

66. One of the most relevant experiences following the negotiating approach of NAFTA are shown by those free trade agreements in which involve Mexico, such as the G-3 which includes Colombia, Mexico and Venezuela and other bilateral agreements between Mexico and Costa Rica, Mexico and Bolivia, Mexico and Chile. MERCOSUR[26] Members are considering this modality for services.

c) The General Agreement on Trade in Services (GATS): The Positive List

67. The General Agreement on Trade in Services (GATS), provides a legal framework for the progressive liberalization of trade in services through successive rounds of negotiations within the WTO. The first round of negotiations on trade in services was completed in the Uruguay Round, although

provisions were made to continue negotiations in the financial, maritime and basic telecommunication sectors and the movement of natural persons as services providers.

68. The GATS defines trade in services to include services delivered through factor movements, i.e. commercial presence and the movement of natural persons. An important feature of the GATS is the clear separation between the General Obligations,[27] and the scheduling of specific commitments. To achieve the liberalization of services in the GATS framework, governments have bound liberalization commitments in a schedule of "specific commitments" following the positive list approach. Progressive liberalization will be achieved through future round of negotiations which will presumably include both goods and services.

69. By adopting this type of approach the contracting parties are committed under the GATS the granting to services and services suppliers of any other party, market access and national treatment only to the extent that they are included in the Schedules of Commitments and subject to under the conditions/limitations in the specific sector, sub-sector or service activity by each of the four modes of delivery included in their list of commitments.

70. In order to be compatible with the GATS, an agreement for trade in services must fulfil two basic conditions: (i) it has to have "substantial sectoral coverage" and shall include all the modes of supply of services, and (ii) it has to provide for national treatment for services providers of the Member States in the services covered by the agreement, e.g eliminating of all discrimination among the parties, in the sectors covered. This conditions must be met either at the entry into force of the agreement, or on the basis of a reasonable time-frame. In order to evaluate the first condition, the number of sectors covered, the volume of trade affected and the modes of supply should be considered. In addition, Article V provides for flexibility with respect to the basic compatibility requirements in two cases: (i) when developing countries are members of a preferential agreement in services, both between developing countries and arrangements with developed countries, and (ii) when such an agreement is related to a wider process of economic integration or trade liberalization. Members which are parties to any agreement shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article. Up to now in the WTO, none of the existing agreements, including the E.U. has been notified and examined in the framework of Art.V of GATS, however they should be evaluated in the future by the Council on Services.

71. The GATS model offer an alternative to Member Countries of an economic grouping negotiate the liberalization of trade in services, in terms of specific commitments with respect to market access and national treatment, by mode of delivery on a sectoral base.

Sectoral Approach

72. Through this approach the general mandates for the liberalization of trade in services are progressively implemented on a sectorial basis, such as by granting the right of establishment and national treatment and the free movement of persons progressively to different services activities. There are many successful experiences of cooperation[28] under this approach in different regions encompassing three main mechanisms: (a) services facilitation, mainly in the area of transport and public utilities services; (b) joint provision of services e.g telecommunications and financial services; and (c) transnational business collaboration, e.g. Business associations in the financial services and joint ventures of individual firms.

73. This approach, that allows for a wide margin of flexibility in the process,

is for example, the one that has been applied by the Gulf Cooperation Council (GCC)" putting into effect the provisions contained in the Unified Economic Agreement regarding transport and communications, and Financial services. Similarly The Treaty instituting the Arab Magreb Union (AMU)", signed in February 1989, has as one of its goals: "working gradually towards achieving free movement of persons and transfer of services, goods, and capital" among member States. The AMU cooperates on the joint development of services and services infrastructure in the field of transportation, telecommunications, postal services and financial services, including insurance and reinsurance. The Association of South East Asian Nations (ASEAN) despite the lack of specific provisions on services in its scheme, has extensively used this approach on the basis of sectoral directives issued by specialized committees for implementing programmes in the area of transport, communications, banking, insurance, and tourism.

74. The liberalization of trade in services can be put into effect through the parallel implementation of sectoral agreements for particular services sectors, and of a general agreement of principles and norms under which the liberalization of other sectors, or sub-sectors, could be negotiated by Member Countries. This approach has been, in principle, agreed as the bases to proceed with the liberalization of trade in services among Member countries of Andean PACT and ALADI at sectoral level. This model recognizes both, the advances achieved in the liberalization of certain services activities within the economic grouping, and the peculiarities of some sectors that could demand a different treatment in terms of trade liberalization. This has been the case, for example, of the recent Andean decisions to liberalize air transport through the establishment of a policy of "open skies", and multiple designation, for subregional operators. In the same vein the Andean countries are developing a programme for the Andean financial integration.

General Mandates to Liberalize Services

75. Most integration grouping among developing countries included services in the original agreements with great emphasis infrastructural services e.g. communications and transport, mainly to support trade in merchandise. However, progress made in the liberalization of trade in goods, has shown to be a necessary, but not sufficient, requirement for launching, with some degree of success, co-operation and integration programmes in the field of services. Such agreements contain general mandates to proceed toward regional free trade in services and do not specify the mechanisms to the need.

76. One example is the Economic Community of West African States (ECOWAS)", set up in 1975 by the Treaty of Lagos recently revised gives services activities comprehensive coverage. The revised Treaty provides for wider coverage and provisions for specific objectives and guidelines for action in many services areas at the general and sector specific level, including the abolition of the obstacles to the free movements of persons, and the implementation of joint development of transport, communications, energy and the adoption of common policies in these fields. The most important initiative among African integration schemes is the constitution of the African Economic Community (AEC), on 15 June 1991, in Abuja, Nigeria. The AEC has among its objectives the liberalization of trade in services among its Member States, that should be accomplished progressively through the implementation of the mandates for the free movement of persons, right of residence and establishment, and the free movement of capital within the Community (Art. 43,44,45). The time-frame to attain this goal is not as detailed as the one proposed for the establishment of the continental Custom Union, but the free trade of services should be consolidated during the final two stages of the programme set for the African economic union. In this process all the existing nine regional and sub-regional groupings should consolidate their activities in this area, and progressively adapt their programmes to the aims and guidelines set for the AEC.

77. To attain such an objective within the AEC, the different economic

groupings in Africa have first to achieve the liberalization of trade in services within the regions or subregions, and ensure a proper coordination, and the harmonization of activities in this field among the different Communities. At the regional or subregional level this implies that all companies, or individuals, belonging to a Member State of an economic grouping, should be able to establish, work and provide services in another Member State in analogous conditions to those applying to nationals. This treatment should gradually be extended to services providers from other African countries".

78. In the Latin American region the Central American Common Market (CACM) and the Caribbean Community (CARICOM) follow this approach. Since the adoption of the Central American Integration Treaty" some mandates regarding cooperation on the development of physical infrastructure were implemented to facilitate trade in goods and to certain extent the movement of persons mainly transporters. More recently, in 1992, with the adoption of new Protocol to the Central American Integration Treaty, a gradual approach for granting free movement of capital, persons, recognition of qualifications, right of establishment for banks and insurance companies and coordination of policies in the area of transports, and telecommunications were set up. Similarly the Treaty establishing CARICOM" grants free mobility of persons, capitals and the right of establishment and operation for economic enterprises and services providers from Member Countries. Now CARICOM Members are taking further steps towards the establishment of a single market and the achievement of a full liberalization of trade in services among the countries of the region.

Least Developed Countries

79. Item 3(k) of the Work Programme of the Standing Committee requested that in carrying out its work, the Standing Committee would give particular attention to the situation of the least developed countries and suggest ways and means for improving their capacity.

80. UNCTAD's documentation on services has always stressed the specific situation of the services sector in the least developed countries. In the documentation prepared for the Standing Committee, the situation of the least developed countries has been underlined. This is particularly obvious in the analysis of the situation of the services sector in Africa, and the implications of the General Agreement on Trade in Services for the development of competitive services sector in Africa.

81. UNCTAD's technical assistance on services had included a significant number of least developed countries, either in the context of individual national projects (Cape Verde, Sao Tomé Principe) or in the framework of a regional programme such as the CAPAS programme described below. Five of the ten countries covered by the CAPAS programme are least developed countries: Bénin, Burundi, Guinea, United Republic of Tanzania and Uganda. Given the success of CAPAS, new countries, mainly least developed countries have asked to join the programme. Accordingly, a new group of countries will be admitted. Provided that separate funding can be secured, more countries will be joining the programme. CAPAS has been supported by a consortium including the Carnegie Corporation of New York, the Government of France, and the International Development Research Center (IDRC) of Canada.

VI. TECHNICAL COOPERATION

82. Through the "Cartagena Commitment", member Governments agreed that the work programme covering trade in services should focus, *inter alia*, on "Technical cooperation, at the national, regional and multilateral levels, to support and assist developing countries in identification of their weaknesses and capabilities in the services sector and to make their services sector more competitive". (TD/364 para. 185 (k)) Likewise, the work programme should be oriented towards "technical cooperation with those developing countries which lack the necessary infrastructures needed for the evolution and development of

their national service sectors". (TD/364, para. 185 (1)).

83. Pursuant to its mandate, UNCTAD has been rendering technical assistance for the development of the service sector to developing countries upon request. Since the conclusion of the Uruguay the UNCTAD secretariat has been involved in the execution of national projects on assisting countries to adopt to the results of the Uruguay Round including of GATS. It is also supporting some countries in the preparation for their accession to the WTO involving, inter alia, negotiation of Schedules of Commitments on Trade in Services, studies and technical assistance activities have also been carried out in the context of regional UNDP financed projects. In certain cases, as noted below, developed country Governments and private institutions have collaborated with UNCTAD in carrying out these tasks. The interregional and the three regional projects financed by UNDP to assist developing countries to participate effectively in the Uruguay Round place high priority on services. Projects in Africa, Asia and the Pacific and, in Latin America and the Caribbean have had specific components addressing services. There has also been an important support from donor countries and institutions in different regions. The main activities are referred below .

a) Services-related technical assistance activities in the African region

CAPAS: a capacity-building programme for Africa

84. The secretariat has been carrying out technical assistance in the field of services for African countries under the "Coordinated African Programme of Assistance on Services", or CAPAS. CAPAS is a capacity-building programme which was launched in April 1992, in response to the request of many African countries. Deficiencies in infrastructural services revealed by structural adjustment and recovery programmes, the Uruguay Round negotiations on a multilateral framework for trade in services, and the inclusion of services in the Lomé have all served to draw the attention of African decision-makers to the importance of services. CAPAS activities are carried out by participating countries through (1) an advisory group of public and private sector representatives, called the Interinstitutional Working Group (IWG), and (2) a National research team or NRT, which prepares analytical studies under the Guidance of and with the support of the IWG which is the ultimate user of the work of the National research team. It is the responsibility of the IWG to push through the public policy machinery proposals for policy changes and reforms.

CAPAS accomplishments

85. CAPAS provided the participating African countries with the tools to assess their national economic policies in the areas of services and to participate more effectively in the negotiations of the General Agreement on Trade in Services during the Uruguay Round. In the process, the programme has also stressed the development of an endogenous analytical capacity not limited to the Government machinery but involving also the national academic and consulting communities and representative organizations from the private sector.

86. A number of reports have been prepared during CAPAS phase I, including ten National Studies on Services: (i) Les services au Bénin; (ii) Les services au Burundi; (iii) Services in Ghana; (iv) Les services en Guinée; (v) Services in Kenya; (vi) Services in Nigeria; (vii) Les services au Senegal; (viii) Services in Zimbabwe; (ix) Services in Uganda; (x) Services in Tanzania; CAPAS phase II will focus on the preparation of national sectoral studies as well as on the preparation of regional studies. Three major regional seminars were organized, to launch the activities of the programme, on one hand, and to assess its outcome, on the other hand.

87. The results of the CAPAS programme have been used in different ways by the participating countries. Until recently, international trade policy-making in many African countries too often received only scant attention from the

Government machinery. And with a strong traditional reliance on natural and agricultural commodities for export earnings, this was even more true of services. With the increasing integration of individual economies, including African economies, in the international trading system, this lack of proper attention is a luxury that countries can no longer afford. The CAPAS project has helped Governments in the participating countries focus on the services issue. More importantly, the programme has succeeded in starting a new dialogue between government and the private sector on matters of policy-making.

88. Some CAPAS countries have used their CAPAS activities and the work of its interinstitutional working group and national research team to further review and strengthen the policies supporting certain sectors activities. One pertinent example is the case of Benin with respect to the policies concerning the use of the Port of Cotonou as a re-import/re-export facility. Having successfully developed strong business linkages with neighbouring countries as a transit trade platform in recent years, the Port of Cotonou and associated service-providers have become robust sources of export earnings. The CAPAS project has provided the Government with a means to bring together the various public, para-public, and private actors involved with the activities of the Port. Another example is the case of Kenya. The National Study on Services has helped create a new awareness in that country for the eroding competitive advantage of the port of Mombassa and the need to respond accordingly.

89. In various degrees, all CAPAS countries have drawn on the analytical capacity gained from the implementation of the programme to prepare the schedules of market access commitments required from all countries to become member of the GATS. CAPAS phase II, by focusing on sectoral areas still under negotiations under the GATS, such as telecommunication services, financial services, and movement of natural persons, will provide additional opportunities for each country to further refine its negotiating position and commitments on services in the World Trade Organization.

b) Service-related technical assistance activities in the Asia and the Pacific region

90. The Secretariat has been carrying out technical assistance related activities in the field of services for Asia and the Pacific since 1993 under the technical assistance programme RAS/92/034 funded by the UNDP. The primary objective of these activities is capacity-building at the national, sub-regional and regional levels for research and analysis and for management in development and trade in services. Since the conclusion of the Uruguay Round of Trade Negotiations the priority has been to examine the implications of the multilateral trade norms on trade in services and global opportunities for expanded trade for developing countries in the region and to disseminate information to the relevant government officials, private sector executives and researchers.

91. The activities consist of: (i) sectoral studies examining the implications of the result of the Uruguay Round Negotiations on Trade in Services, as well as identifying existing barriers to export the services concerned; (ii) work on the database on measures affecting trade in professional and business services in the region; and (iii) organizing training seminars. The studies completed are: (a) Trade in Computer Services and the Role of Telecommunications Services in the Export Field; (b) Uruguay Round of Negotiations on Trade in Services and their Impact on Pacific Island Countries; (c) Export Potential for Education Services in ASEAN countries; (d) Trade in Computer Services and the Role of Telecommunications: the Hong Kong Case; (e) Trends in China's Medical Service Exports and the Role of Telecommunications Services in the Exports; (f) Current Status and Future Prospect of the Korean Telecommunications Industry. Most of these studies were undertaken by local research institutes under the close supervision by the Secretariat with a view to building up local research capacity. Such a collaboration has led to establishing working relation with some national institutes in the region. The work on the computerized database

on measures affecting trade in business and professional services has been undertaken. It is part of the overall UNCTAD work on establishing the database on measures affecting services trade. The Regional Seminar on Telecommunications Support for Trade in Services was organized jointly by UNCTAD and the Asia-Pacific Telecommunity from 14-17 May 1994 and hosted by the Government of Maldives. The Seminar has contributed to increasing the knowledge of telecommunications officials on the issues discussed in the Uruguay Round of Negotiations on Trade in Services, particularly trade in telecommunications services, as well as improving the understanding of telecommunications officials on the role of telecommunications services in enhancing trade in services.

92. For future activities in the context of service-related technical assistance in the Asia and the Pacific region, the Secretariat plans to focus on identification of barriers for exports of services. The sectoral studies referred above provide an oversight of existing barriers in the exporting of services concerned. For example, in developing export trade in services, combinations of different modes of supply are often required, for example, movements of persons and cross border trade through information networks for trade in computer related services, or cross-border, movement of persons and capital for trade in professional services. This suggests that identification of barriers would be necessary for all modes which take place to complete a service trade in order to establishing practical policy recommendations for increasing exports of services in the Asia and the Pacific region and preparing for the future bilateral, plurilateral and multilateral negotiations on trade in services. The sectoral examination would be complementary to the on-going effort on building up the database on measures affecting trade in services.

c) Services-related technical assistance activities in the Latin American and the Caribbean region

93. In Latin America and the Caribbean, UNCTAD's technical assistance on services includes three main line of tasks: (1) Regional activities carried out in the framework of the work programme of Project RLA/92/012 LATINTRADE and its predecessor executed by UNCTAD together with ECLAC and SELA; (2) subregional and National activities provided under subregional and national projects; and (3) sectoral studies carried out jointly with regional organizations and/or with support with donors.

94. At the regional level the LATINTRADE project and its predecessor project provided resources for technical assistance to the GRULAC in Geneva, integration grouping including JUNAC, ALADI, CARICOM, CACM, MERCOSUR and almost all the countries of the region to support their participation in the negotiations of the Uruguay Round. Since the signature of the Act of Marrakesh and the implementation of the WTO, LATINTRADE has prepared together with SELA, an assessment of the impact of GATS and the other agreements of the Uruguay Round in terms of market and business opportunities in the region. During the 1994/95 period, LATINTRADE has carried more than 20 seminars, workshops and technical meeting in many countries in collaboration with regional and/or subregional organizations.

95. UNCTAD is also collaborating with specialized organizations in the preparation of joint studies and in rendering technical assistance on specific issues. For example, UNCTAD, in collaboration with the Panamerican Health Organization (PAHO), is preparing a background study to identify the possibility for selected countries in the Latin American region (Colombia, Costa Rica, Cuba, Jamaica and Mexico) to export health services. Similarly, UNCTAD is collaborating with the World Tourism Organization (WTO) in joint technical assistance activities relating to tourism. Many of the studies prepared under technical assistance programmes at the regional and national level have been published. They constitute valuable sources for the analysis of national experiences and stand as a point of reference for UNCTAD's future work.

96. UNCTAD's capacity to respond effectively to requests for technical

assistance on the development of services is affected by the availability of extra-budgetary resources. Looking at the future and aiming at overcoming the existing financial constraints the Standing Committee on Services, may wish to invite the community of donors to make contributions to UNCTAD's Technical Cooperation programme on services to complement that of UNDP. Such assistance could focus on the following three main areas of technical cooperation: (a) policy options for the development of competitive services, following the lines of the work programme; (b) more sectoral or issue-specific training programmes involving seminars, workshops and in-job training addressing the needs of both public and private sectors; and (c) publication and dissemination of relevant materials presenting experiences at broad national and sectoral levels.

1. UNCTAD/SDD/SER/1.

2. TD/B/CN.4/26.

3. TD/B/CN.4/23.

4. UNCTAD/DTC/7.

5. UNCTAD/SDD/SER/3.

6. Communication from Brazil, chile, Colombia, Cuba, Honduras, Jamaica, Nicaragua, Mexico, Peru, Trinidad and Tobago, and Uruguay, Structure of a Multilateral Framework for Trade in Services, GATT Doc. No. MTN.GNS/W/95 (Feb. 26, 1990).

7. R. Ford and W. Suyker, OECD Economic Studies Working Paper No. 15 , Industrial Studies in the OECD Economies, Autumn 1990.

8. It should be noted that GATT Article III provides, in paragraph 8(a), that the provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or changes applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

9. For more details see "The impact of subsidies on trade in services" (UNCTAD/SDD/SER/3), 4 October 1993, which has been prepared under item 3(d) of the Work Programme. The Agreement on Subsidies and Countervailing Measures included in the Uruguay Round Final Act provides a definition of a subsidy. The Agreement divides subsidies into three categories, i.e. prohibited subsidies, actionable subsidies and non-actionable subsidies and provides special and differential treatment for developing countries in its Article 27, which includes the phase-out of export subsidies within an eight-year period. It should be noted that this Agreement already addresses some services, for example, the preferential provision of internal transport and freight on export shipments, provided or mandated by governments on terms more favourable than for domestic shipments, constitutes a prohibited export subsidy, and government assistance to consultancy services used for research purposes is considered as a non-actionable subsidy. See also Industrial Subsidies in the OECD Economies by Robert Ford and Wim Suyker OECD Economic Studies No. 15, Autumn 1990.

10. See Industrial Subsidies in the OECD Economies by Robert Ford and Wim Suyker,OECD Economic Studies NO. 15, Autumn 1990.

11. Iceland, Norway, Korea Switzerland and Sweden include the entry eligibility for subsidies may be limited to juridical persons established within the territory concerned and subsidies are available only to natural persons may be limited to their respective citizens.

12. For example, the Malaysian schedule provides any measures and special preferences unbound when granted to Bumiputera, and Bumiputera companies and institutions set up to meet the objectives of specific government policies are unbound. Australia provides under national treatment limitations and commercial presence mode the entry unbound for current and future measures at, federal, state or local government levels according rights or preferences to any indigenous person or organization providing for the favourable treatment in relation to acquisition, establishment or operation of any commercial or industrial undertaking in the services sector.

13. The schedule of Kuwait gives detailed information on the types of instruments used to subsidize. It enters an all sector limitations on national treatment in commercial presence and presence of natural persons modes of supply providing that national services industries and services may receive incentives and assistance, like industrial land blocks, easy financial loans, market research and marketing programmes including the organization of exhibitions or facilitating in Kuwait and international fairs, free or with lower costs, establishing marketing centres an granting discount prices of its advertising programmes and other incentives.

14. The Canadian addendum provides under all sectors limitations to national treatment for subsidies measures applied at sub-central level. On commercial presence, the Industrial Development Corporation provides differential treatment in the case of loans to firms not controlled and headquartered in Quebec, the Program Favouring Strategic Alliances and Groupings is limited to groupings or strategic alliances controlled in Quebec, and benefits available from the Quebec Business Investment Corporation are limited to Canadian controlled firms. On movement of natural persons, benefits from Ministry of Industry, trade, Science and Technology Programs for (i)scientists in business and strategic employment are limited to permanent residents and (ii) studies on strategic development in business are limited to consultants resident in Quebec. On financial services, all partners of any partnership applying for assistance from Community Loan Fund Corporation (Ontario), must be Canadian residents. (Document PC/SCS/SP/1).

15. See the statement by the delegation of Switzerland to the GNS at its Meeting on 14 December 1993.

16. According to the United States, the Panel report (GATT document DS23/R, 16 March 1992) states that if a state were to grant tax credits for state excise taxes on a non-discriminatory basis to small breweries inside and outside the United States, it would still be a violation of the national treatment obligations of GATT Article III:2. The Panel argues this is the case even though it recognizes that without violating the GATT, a state could provide a direct production subsidy limited to domestic small breweries. The possibility that in a GATS dispute this analysis, which depends heavily on the interpretation of the term "like products", may be applied to "like service suppliers" in different jurisdictions, with the result that certain non-discriminatory tax measures may be found to violate the national treatment provisions of the GATS, has inspired substantial caution on the part of the United States.

17. The Swiss response provided that the Swiss Confederation may grant guarantees for the financing of Swiss-flag vessels when they are needed for supplying goods to Switzerland. Cyprus provides for indirect preferential treatment granted exclusively to national shipping enterprises in the form of preferential tax treatment in accordance with the Merchant Shipping Law 1992. Hong Kong provides that income derived from international operation of ships registered in the Hong Kong Shipping Register is exempted from profit tax. Australia provides treatment for tax purposes may differ for example consideration is being given to exempting seafarers serving on Australian ships from income tax. Japan provides for Japanese Development Bank low-rate loans, applied only to Japanese-owned and flagged vessels, for the construction of vessels; there were also special depreciation provisions on tax levied on Japanese vessels.

18. These measures are covered by the Agreement Respecting Normal competitive Conditions in the Commercial Shipping and Repair Industry and the Related Understanding on Export Credits for Ships of the OECD which is targeted to become effective on 1 January 1996.

19. TD/B/CN.4/43.

20. UNCTAD/SDD/SER/2.

21. Rodney de C. Grey, "1992, Services Sector and the Uruguay Round". *Trade in Services: Sectoral Issues*, UNCTAD/ITP/26. This study prepared by UNCTAD present the treatment granted among members of the European Union and to third countries in specific service sectors such as CRS, financial services, audiovisual, transports, professional services.

22. In 1991, with Poland, Hungary and Czechoslovakia (the agreement was renegotiated in the same terms with the two States resulting from the partition), and in 1992 with Rumania and Bulgaria.

23. OECD, Introduction to the OECD Codes of Liberalization, OECD Publication 1987.

24. Annex I lists reservations maintaining existing non-conforming measures. Annex II lists sectors, sub-sectors and/or activities in which NAFTA Parties may enact new non-conforming measures(i.e. 'unbound' measures). Annex III lists sectors reserved to Mexico. Annex IV lists the exceptions to the MFN principle in respect to existing or future international agreements. Annex V lists each Party's non-discriminatory quantitative restrictions. Annex VI lists miscellaneous liberalizations commitments. Annex VII lists reservations, specific commitments and other items specific to the financial services.

25. There is a full package for the treatment of professional services composed of three elements. First, an agreement to remove within two years after the entry into force of the agreement, all citizenship and permanent residence requirements attached to the licensing and certification of professional services providers. Second, the establishment of detailed work programme aimed at liberalizing the licensing of foreign legal consultants and providing for the temporary licensing of engineers. Third the development of governing principles and rules under which citizens of NAFTA countries could obtain temporary entry in another Member to pursue business without meeting a labour market or 'economic needs' test.

26. Includes: Argentina, Brazil, Paraguay and Uruguay. The Treaty of Asunción defines as one of its main objectives the free movement of goods, services and productive factors among its Member countries.

27. Unconditional MFN, transparency, recognition of licenses and certification, domestic regulation and the behaviour of public monopolies.

28. Luis Abugattás, "Services as an element of co-operation and integration among developing countries: implications for the Uruguay Round of Multilateral Trade Negotiations" in Trade in Services Sectoral Issues, pp 431-476, UNCTAD/ITP/26. January 1990.

29. Created by the Riyadh Declaration of 4 February 1981, Includes the following Members Countries: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

30. Instituted by the Kingdom of Morocco, Tunisia, Algeria, Libya and Mauritania.

31. The Members of Ecowas are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo.

32. Some of the groupings, as the ECOWAS has established the mandatory time-frames for achieving this objective. In the context of the programme set for in the AEC Treaty this mandates should be implemented, and those groupings which did not consider the liberalization of trade in services should define instruments and mechanism to accomplish this task.

33. Created the Central American Common Market. Member States are: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

34. The Caribbean Community includes the following Member States: Antigua and bermuda, Bahamas, Barbados, Belize, Grenada, Guyana, Jamaica, Monserrat, St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.